

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD
4 - - - - -X
5 IN THE MATTER OF: :
6 New Japan, Inc., :
7 t/a Sushi Taro :
8 1503 17th Street N.W. : Case #15-CMP-00803
9 License #9655 : Fact Finding
10 Retailer CR : Hearing
11 ANC 2B :
12 Purchased Alcohol from a :
13 Retailer :
14 - - - - -X

15 Wednesday, February 17, 2016

16

17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

21

22

1 CHAIRPERSON:

2 DONOVAN ANDERSON, Presiding

3

4 BOARD MEMBERS:

5 NICK ALBERTI

6 RUTHANNE MILLER

7 JAMES SHORT

8 MIKE SILVERSTEIN

9 DANETTE WALKER

10

11 ALSO PRESENT:

12

13 JIN YAMAZAKI,

14 Licensee

15 INVESTIGATOR BRASHEARS,

16 On Behalf of ABRA

17

18

19

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1 P R O C E E D I N G S

2 CHAIRPERSON ANDERSON: All right. We're
3 back on the record. I'd like to call our first.
4 It's a fact finding hearing for Case No. 15-CMP-
5 00803, Sushi Taro, License No. 9655. Will the
6 parties please approach and identify yourself for
7 the record. Can you come sit there?

8 Sign your name, please, sir, on that
9 paper and please identify your name for the --
10 I'm sorry, identify yourself for the record,
11 please.

12 MR. YAMAZAKI: My name is Jin Yamazaki.
13 I'm a Vice President of Sushi Taro, Japanese
14 Restaurant.

15 CHAIRPERSON ANDERSON: Write your name on
16 that.

17 MR. YAMAZAKI: Yeah. Okay.

18 CHAIRPERSON ANDERSON: You did already?
19 Okay. Yes, Mr. --

20 MR. BRASHEARS: Investigator Brashears
21 with ABRA.

22 CHAIRPERSON ANDERSON: Yes. All right.

1 Are you aware why you're here, sir?

2 MR. YAMAZAKI: Yes.

3 CHAIRPERSON ANDERSON: All right. Okay,
4 so all right. Then, Mr. Brashears, then you can
5 provide us with your report, please.

6 MR. BRASHEARS: Yes, sir.

7 CHAIRPERSON ANDERSON: And I apologize
8 for our tardiness. I know it was scheduled for
9 1:30 and I appreciate -- I apologize for not
10 being here promptly at 1:30 to start. I do
11 appreciate and acknowledge everyone's time. So,
12 all right. Thanks.

13 MR. BRASHEARS: On Wednesday, October
14 21st, 2015 I visited Sushi Taro and spoke with
15 Mr. Yamazaki. I conducted a regulatory
16 inspection and during the regulatory inspection I
17 saw a file and I was looking at invoices that
18 said Cairo Liquors. When I asked Mr. Yamazaki
19 about it he stated that approximately one year
20 ago there was some type of accounting error with
21 one of his alcohol distributors and his accounts
22 were frozen with them. And he said, essentially

1 since that time he had been buying the bulk of
2 his alcohol from Cairo Liquors.

3 When I researched it further I found from
4 essentially the entire 2015, from January until I
5 visited the establishment in October, he made 31
6 purchases from Cairo Liquors, totaling
7 approximately \$8,280.

8 I reviewed all of the receipts and all of
9 the purchases were made during days and times
10 that the wholesalers were open. As I researched
11 it further I spoke with an individual from Pascal
12 and Weiss concerning why a person's account might
13 be frozen and he basically said it could be due
14 to credit issues, and the individual being loaded
15 into the Beverage Alcohol Credit Control System.

16 However, in this instance the individual
17 that checked the record found that there was no
18 issue with Sushi Taro. They were able to
19 purchase.

20 Upon further inspection of the alcohol
21 invoices I found that Mr. Yamazaki was actually
22 getting alcohol from Capitol Eagle and from Hop

1 and Wine, and that he was also getting import
2 permits, or imported alcohol and import permits.
3 And all of these invoices were kept
4 appropriately. So when I went back and rehashed
5 it and basically instructed him that, you know,
6 unless it's a time when wholesalers are closed
7 you're, you know, required by regulation to
8 purchase from wholesalers. And Mr. Yamazaki
9 asked me why it was such an issue. And he stated
10 that he didn't see the difference between a
11 wholesaler and a liquor store, seeing as how the
12 District of Columbia got their taxes.

13 At which time I instructed him, it's part
14 of the ABC license to follow ABRA regulations.
15 So it seemed at the time that the alcohol
16 purchases from Cairo Liquors was more of a
17 convenience or maybe that he just decided to do
18 it versus a necessity.

19 And that's the gist of my report, sir.

20 CHAIRPERSON ANDERSON: All right, sir.
21 What do you have to share regarding this, the
22 report that was just made?

1 MR. YAMAZAKI: Yeah, that's pretty much
2 accurate. That's what happened. And yeah, main
3 reason why I --

4 CHAIRPERSON ANDERSON: Oh, hold on one --
5 we're just trying to gather some facts about this
6 case. It's not adversarial, so no one is under
7 oath or anything like that. We're just, based on
8 the report, the Board is just gathering
9 information to see what was going on in your
10 version of why you are acting the way you are.
11 You're operating the way you are operating.

12 MR. YAMAZAKI: Okay. Mr. Brashears
13 mentioned, there was a accounting problem with
14 one or two of the distributors when I was trying
15 to close. In the end, there was some kind of a
16 balance in the end and everything was returned.

17 So anyway, throughout I learned about
18 this system over BACCS, Beverage Alcohol Credit
19 Control System. And some of the distributors is
20 in the system and some of them are not. And if I
21 have the bad credit with one of the distributor,
22 and so within the system, I can't get credit from

1 other distributors. And that was a very -- to
2 me, like inconvenient and like I say, I had a
3 couple issues when I was trying to close the
4 account. Then to look further for the future I
5 didn't want to go through the same scenario. So
6 I was trying to eliminate my distributor to
7 minimize.

8 And so still, I had some -- I have to get
9 some of the liquor, not from them. So the
10 ultimate my decision was getting from the liquor
11 store. And back then it kind of, we in the
12 industry people, kind of understand that after
13 5:00, basically when distributor's offices are
14 closed, then we can purchase liquor from a liquor
15 store. That was our understanding, kind of
16 standardized in our industry and that the owner
17 of the Cairo Liquors say the same thing. You can
18 only receive after the 5:00. So I was keep doing
19 that. That's what he found the receipt, some of
20 them are each stage before 5:00.

21 But after that he came first time in
22 October, was the first time. And I think after

1 that I stayed after, you know, receiving after
2 5:00. But further on he investigate and it seems
3 to me law or regulation changed and there is not
4 much window, me to purchase from liquor store.
5 That's the latest fine. And that -- well, if
6 that's the rule then I'm going to just follow the
7 rule.

8 But like I say, I had an issue and this
9 was the ultimate way for just having a, you know,
10 necessary liquor for my restaurant. And I don't
11 really deal with heavy liquor like all other
12 restaurant or [garbled speech]. I have really,
13 really minimum, like I need a couple of bottle
14 let's say Grey Goose, that kind of things. I
15 don't have the full bar. Mostly wine and
16 Japanese Sake is the main things we have. So I
17 don't really need -- I can't even get the minimum
18 order of \$150 from these people anyway.

19 So that was the decision that I was
20 getting from the liquor store.

21 CHAIRPERSON ANDERSON: I'm still new to
22 this but I'm confused from your explanation.

1 I'll tell you and maybe you can explain this to
2 me. Was it -- are you saying that you had, you
3 initially had a credit issue with one of the
4 wholesalers?

5 MR. YAMAZAKI: Yes.

6 CHAIRPERSON ANDERSON: And so when was
7 that?

8 MR. YAMAZAKI: Probably 2014.

9 Everything, his investigation --

10 CHAIRPERSON ANDERSON: Well, I'm asking
11 you. I mean --

12 MR. YAMAZAKI: Yeah, '14.

13 CHAIRPERSON ANDERSON: -- it can be his
14 investigation. You've been operating a certain
15 way for a period of time. So I'm just trying to
16 find out when is it -- what I'm trying to find
17 out is that you used to buy your liquor from the
18 wholesalers.

19 MR. YAMAZAKI: Yeah.

20 CHAIRPERSON ANDERSON: When was the last
21 time you stopped buying it from the wholesalers
22 and what happened for you to stop?

1 MR. YAMAZAKI: The early summer of 2014.

2 CHAIRPERSON ANDERSON: Early summer of
3 2014, and you stopped buying. And why did you
4 stop buying it from the wholesaler?

5 MR. YAMAZAKI: I think one of the --

6 CHAIRPERSON ANDERSON: No, I'm saying,
7 why did you stop buying it from the wholesaler in
8 2014?

9 MR. YAMAZAKI: Well, basically one of
10 them couldn't -- I was buying only one particular
11 brand.

12 CHAIRPERSON ANDERSON: All right.

13 MR. YAMAZAKI: And that brand didn't get
14 through from the Japan anymore. So it was out of
15 order.

16 CHAIRPERSON ANDERSON: Right.

17 MR. YAMAZAKI: Out of stock. Then I had
18 nothing else to, you know, purchase from them.
19 So that's why I closed the -- I was trying to
20 close the account.

21 CHAIRPERSON ANDERSON: All right.

22 MR. YAMAZAKI: And in the end, I don't

1 know, somehow they had a balance in their --
2 yeah, that was one of the issues.

3 CHAIRPERSON ANDERSON: So they basically
4 said that -- so you're saying they no longer sold
5 the brand that you purchased.

6 MR. YAMAZAKI: Right.

7 CHAIRPERSON ANDERSON: That there was a
8 balance that say you weren't aware what the
9 balance is. And so because there was a balance
10 did you try to go to another wholesaler to buy
11 the brand of wine or liquor?

12 MR. YAMAZAKI: Usually in the D.C. one
13 brand is only one distributor.

14 CHAIRPERSON ANDERSON: Right.

15 MR. YAMAZAKI: Get license to sell --

16 CHAIRPERSON ANDERSON: Right.

17 MR. YAMAZAKI: -- the brand. So you
18 can't get same brand from other people.

19 CHAIRPERSON ANDERSON: So, but who is the
20 liquor store buying it from?

21 MR. YAMAZAKI: What do you mean?

22 CHAIRPERSON ANDERSON: Okay. You've been

1 buying it from a -- you've been purchasing the
2 liquor from -- because you said a couple of
3 things. One of the things you said that the
4 regulations, you thought that you could only buy
5 it after 5:00.

6 MR. YAMAZAKI: Yes.

7 CHAIRPERSON ANDERSON: And so therefore
8 you're buying it after 5:00, but then in the
9 report it says that you had purchased it
10 sometimes before 5:00. And so, but so the part
11 of it that I'm not following is that if you're
12 saying that, okay, this wholesaler stopped
13 selling the product, and so therefor I could no
14 longer buy it from this distributor, so I need to
15 find someone else, that's one thing. But are you
16 also saying that you had a credit issue with this
17 distributor, and so therefore these other
18 distributors were not allowing you to purchase
19 from them and so therefore you were then going to
20 -- that's why you're going to the liquor store to
21 buy it.

22 MR. YAMAZAKI: Yeah, that's why I, from

1 that point, I made the decision minimize to deal
2 with the dealer that was in the system.

3 CHAIRPERSON ANDERSON: All right. Well,
4 maybe another board member will have a question
5 since you know, when it was decided to have a
6 fact finding hearing I wasn't here. So maybe
7 some of the -- another board member might have
8 some questions to get, sir.

9 MR. YAMAZAKI: I'm not trying to excuse
10 myself.

11 CHAIRPERSON ANDERSON: I'm not -- no,
12 sir, I'm not --

13 MR. YAMAZAKI: His report is correct and
14 that I'm just adding, you know, the idea why I
15 had to do this way.

16 CHAIRPERSON ANDERSON: All right. So --

17 MR. YAMAZAKI: I'm not denying anything.

18 CHAIRPERSON ANDERSON: No, I'm not saying
19 that. I'm just trying to find out the reason.
20 The law is clear where you have to purchase it
21 from. And so I'm just trying to -- at least I'm
22 just trying to find out in my mind why you're

1 doing it. I saw because it's unclear to me at
2 this juncture whether or not it's -- that the
3 distributor didn't sell the product that you
4 needed, or whether or not there was a credit
5 issue. And so because there was a credit issue
6 with -- you left the distributor and no other
7 distributor would -- you could buy from them
8 because you were blacklisted because everyone use
9 the same system and so, quote/unquote, if you
10 have bad credit with one person you have bad
11 credit with everyone else. And so therefore they
12 won't sell it to you. And that's the part of it
13 that I'm unclear. It's unclear to me the
14 reasoning why you're not purchasing it from the
15 proper source.

16 Go ahead, Mr. Alberti.

17 MR. ALBERTI: Yeah. I understand the
18 Chair's confusion. But let me tell you what I'm
19 hearing from you is that it's not that nobody
20 will -- it's not that the distributors won't sell
21 to you, it's that -- right correct. It's that
22 because of what -- because of some conflict you

1 had with the distributors in 2014, you've decided
2 that you're not comfortable with buying from the
3 distributors?

4 MR. YAMAZAKI: Yes.

5 MR. ALBERTI: Is that really the bottom
6 line?

7 MR. YAMAZAKI: Yes. Yes.

8 MR. ALBERTI: Okay. All right. So you
9 could go tomorrow and buy from the distributors.

10 MR. YAMAZAKI: Yes.

11 MR. ALBERTI: If you had to. Right. If
12 you were forced to.

13 MR. YAMAZAKI: Right. Yes.

14 MR. ALBERTI: Right. You may be forced
15 to because the law is pretty clear that you have
16 to buy from distributors except during those
17 times in which it's -- you can't. Like on
18 weekends when they're not open. But if it had
19 just been one time that you -- that, you know,
20 after 5:00 you got caught short and you went to
21 the retailer and you bought you know, a couple
22 bottles from the retailer, and it was only one

1 time, you wouldn't be here. But it's pretty
2 obvious that you're doing it on a regular basis.
3 It's not because the distributors aren't open.
4 It's because you've chosen to buy it from the
5 retailers.

6 MR. YAMAZAKI: Yes.

7 MR. ALBERTI: You can't do that. You
8 can't do that. I mean, if they're not going to
9 deliver you have to go out there. I mean, that's
10 just the cost of doing business because the law -
11 - we don't make the law. We enforce the law.
12 The law says that you have to buy from the
13 distributor except in those cases where they
14 don't have the product or they're not open. So
15 you can't purposely avoid buying from the
16 distributor.

17 MR. YAMAZAKI: All right.

18 CHAIRPERSON ANDERSON: Yes, Mr. Short.

19 MR. SHORT: Good afternoon. How long
20 have you been in business?

21 MR. YAMAZAKI: In and out, 30 years.

22 MR. SHORT: Selling alcohol?

1 MR. YAMAZAKI: Yes.

2 MR. SHORT: Here in Washington D.C.?

3 MR. YAMAZAKI: Yes. At this
4 establishment.

5 MR. SHORT: At this same establishment?

6 MR. YAMAZAKI: Yeah.

7 MR. SHORT: Very nice neighborhood.

8 MR. YAMAZAKI: Yes.

9 MR. SHORT: You must do --

10 MR. YAMAZAKI: It wasn't before, 30 years
11 ago.

12 MR. SHORT: Oh no, we're well doing now.
13 But I'll just say this, I'm glad that it's
14 changed for the better. And you've been here for
15 30 years and you've been in Washington D.C. for a
16 lot of years, so you understand the laws and
17 rules. And so are you admitting that you know
18 you broke ABC Code laws? You're admitting that?
19 Did you break the laws?

20 CHAIRPERSON ANDERSON: He said he didn't
21 know.

22 MR. YAMAZAKI: Well, I didn't know the

1 law.

2 CHAIRPERSON ANDERSON: He said he didn't
3 know.

4 MR. SHORT: Okay. All right. So now
5 that you know, what are you going to do going
6 forward if you are to keep your license? What
7 are you going to do different?

8 MR. YAMAZAKI: I have to purchase from
9 distributor.

10 MR. SHORT: You will be doing that?

11 MR. YAMAZAKI: Well, if that's the only
12 way, yes.

13 MR. SHORT: The law says that's the only
14 way. And if you're going to stay in good
15 business in a good neighborhood and continue to
16 prosper and continue to bring your neighborhood
17 up, you're going to have to comply. And so all I
18 want to hear as a board member, and I can only
19 speak for me, is are you going to now comply with
20 the law and codes as they are written and reason
21 why you're here?

22 MR. YAMAZAKI: Sure.

1 MR. SHORT: You agree to that?

2 MR. YAMAZAKI: Yes.

3 MR. SHORT: So we won't see you again
4 with this same charge?

5 MR. YAMAZAKI: No.

6 MR. SHORT: That's all I have, Mr. Chair.
7 Thank you.

8 CHAIRPERSON ANDERSON: Mr. Silverstein,
9 have any questions?

10 MR. SILVERSTEIN: No, I'm familiar with
11 the licensee. I'm quite familiar with his
12 restaurant. I know it's a high-quality place.

13 CHAIRPERSON ANDERSON: Okay.

14 MR. SILVERSTEIN: Apparently this is an
15 issue between you and the wholesalers and it has
16 not been addressed in the proper manner. And I
17 hope that moving forward that you will do so,
18 sir.

19 CHAIRPERSON ANDERSON: Well, let me ask
20 you a question. So, in order for you to operate
21 your business are you able to buy your alcohol
22 from the proper source? Is that something that

1 you are able to do?

2 MR. YAMAZAKI: Yes.

3 CHAIRPERSON ANDERSON: So if the Board
4 was to say today that you need to go to one of
5 these distributors and buy your liquor, this is
6 something that you are able to do?

7 MR. YAMAZAKI: Yes.

8 CHAIRPERSON ANDERSON: So there is no
9 impediment for you doing that?

10 MR. YAMAZAKI: Yes.

11 CHAIRPERSON ANDERSON: Well, meaning no,
12 there is no impediment. That's it. Yeah. I
13 just, I want to be clear that before we make
14 recommendations that you have explained to us
15 that this is -- that you made a choice because
16 you didn't want to deal with all these other
17 issues, you made a choice.

18 MR. YAMAZAKI: Right. Yes.

19 CHAIRPERSON ANDERSON: But now the Board
20 is telling you that the choice you made is the
21 wrong decision. And so therefore, before we say
22 X, Y, Z, you know what the law is and you know

1 what you have to do and that you are able to
2 comply with the law. All right. Well -- yes,
3 Ms. Miller?

4 MS. MILLER: Okay. I just have a couple
5 follow-up questions. I wanted to ask you, did
6 Mr. Brashears tell you November that you needed
7 to be buying from a wholesaler?

8 MR. YAMAZAKI: Second time I think he
9 told me, probably my window is only on the
10 weekends. You know, that's --

11 MS. MILLER: Right. To buy from the
12 retail. Okay.

13 MR. YAMAZAKI: Yeah. So that's a new
14 information and now today I ask him, I think
15 window is much more small. Regulation probably
16 changed. Some of the day, but it still coming
17 like 8:00 or 9:00 in the evening. So no more
18 5:00. And Saturdays to some of them are
19 delivering. So that's --

20 MS. MILLER: Okay. So it sounds to me
21 like you're interpreting this law like, it's okay
22 to buy retail as long as you squeeze it in the

1 window.

2 MR. YAMAZAKI: That was I was trying to -
3 - yeah.

4 MS. MILLER: I don't think that's the
5 intent of the law, though. And so --

6 MR. YAMAZAKI: But they made that clear.
7 Yes.

8 MS. MILLER: Okay. So, that's -- so is
9 it your position you've been trying to comply
10 with the law by buying within these windows where
11 the wholesaler is not open?

12 MR. YAMAZAKI: Right. Yeah.

13 MS. MILLER: Okay.

14 MR. YAMAZAKI: I will purchase, yeah,
15 from distributor.

16 MS. MILLER: Okay. So, all right. I
17 just want to say that if you have any doubts
18 about interpreting the laws that you ought to
19 check with ABRA as opposed to, you know, our
20 general counsel or our office as opposed to, you
21 know, like the liquor store says it's okay to do
22 certain things.

1 MR. YAMAZAKI: Well, to me low is low.
2 Sometimes it's a square and it's time matter.
3 Sometime at the moment, that's the law. But 10
4 years later that's not the law. I mean, it keeps
5 changing. So --

6 MS. MILLER: See, sometimes it's how it's
7 interpreted too, and how the Board has
8 interpreted it.

9 MR. YAMAZAKI: Also, you kind of you
10 aimed it -- I wouldn't say laws meant to be
11 broke, but like you mentioned, narrow down
12 today's law, and today's niche area that what I
13 still can purchase on Sunday.

14 MR. ALBERTI: Well --

15 MR. YAMAZAKI: I'm just telling you the
16 idea.

17 CHAIRPERSON ANDERSON: But, I'm sorry,
18 Ms. Miller. But this is what -- when you leave
19 here today this is what I want you to leave with.
20 That the law states that you have to buy your
21 liquor from --

22 MR. YAMAZAKI: Yes. You stated. Yes.

1 CHAIRPERSON ANDERSON: Right. However,
2 if in the middle -- and I'm going to be very
3 specific. So you have been doing this business
4 for 30 years and you know how many bottles of
5 liquor is going to sell for the night. So you
6 need to buy all of it. So if just in case, if
7 you normally sell 10 bottles of vodka for the
8 night, you bought your 10 bottles and you realize
9 that you sold off all 10, or you sold nine and
10 the next day you need -- you still have it but
11 the distributor is closed, that is the only way
12 you can go and buy it from a liquor store.

13 But I don't want you to go buy five
14 bottles knowing that you need 10 and then you go
15 to the liquor store to go buy it because you
16 calculate that. So it's only for an emergency.
17 So you can't say, well, you know, because I can
18 buy it at 5:00, it's an emergency for you not to
19 not have liquor. But you have to plan based on
20 the way your business is. You know how much you
21 need and you're -- because you're always supposed
22 to buy it from the distributor.

1 But the law gives you an out to say if
2 you have an emergency, and you know what an
3 emergency is. That's something that's
4 unexpected. Not that you know that you're going
5 to sell 10, you only buy five knowing that
6 because you want to go buy somewhere else. So
7 that's -- so I hear your saying it. I mean,
8 you're looking at the law and you're looking at
9 the outskirts of the law. I'm not saying you're
10 intentionally doing that. But I'm saying, I'm a
11 lawyer so we, as a lawyer, that's how we look at
12 things.

13 But I want you to know what the law is
14 and we want you to confide to do what the law
15 says and not look at the outskirts of the law to
16 say, well, you know, it says I can buy it at 5:00
17 so if I go buy it at 5:00 I'm perfectly fine.
18 That is not -- that's not perfectly fine. That
19 is -- and there is an officer there and he'll
20 tell you, not with alcohol, but he'll tell you
21 what the law is. We try to stay within the box
22 and we don't try to stay at the fringes to say,

1 you know, if they say I can buy it at 5:00, so as
2 long as I buy it at 5:00 I'm within the law. It
3 says that you're not paying attention to what the
4 law is and what your obligation is. And
5 especially since this is a business that you have
6 been running for a long period of time.

7 All right, with that said, and we have a
8 2:00, I make a recommendation that we give you a
9 warning.

10 MS. MILLER: I don't --

11 CHAIRPERSON ANDERSON: Yes.

12 MS. MILLER: Okay. I was going to ask if
13 we could maybe take this under advisement. But
14 if we're going to discuss this I'm not sure if
15 the penalty schedule allows the --

16 CHAIRPERSON ANDERSON: Legal --

17 MS. MILLER: I checked it here.

18 CHAIRPERSON ANDERSON: All right.

19 MS. MILLER: Okay. I'm sorry. I'm
20 looking at the schedule. Maybe I'm misreading
21 it.

22 CHAIRPERSON ANDERSON: We were

1 provided --

2 MS. MILLER: It's not listed.

3 CHAIRPERSON ANDERSON: The General
4 counsel has informed us -- I mean, we can either
5 make a decision or make it, but the general
6 counsel has informed me what our options are. So
7 we can either take it under advisement or --

8 MR. SHORT: I suggest we listen to our
9 legal counsel.

10 CHAIRPERSON ANDERSON: And so --

11 MR. ALBERTI: I suggest we give a
12 warning.

13 CHAIRPERSON ANDERSON: And so the
14 recommendation -- I'll wait for --

15 [Discussion off the record.]

16 CHAIRPERSON ANDERSON: All right. So
17 based on the recommendations from -- and I mean,
18 I think the purpose of the fact finding hearing
19 was to get some explanation from you. After our
20 Investigator Brashears went out and did an
21 investigation, which is a very good report, and
22 clearly you're not denying anything in the

1 report. And our job is not to put the hammer
2 down but just to make sure that you comply with
3 the law. And one of the reasons, I was told the
4 reason why we have a fact finding is just to get
5 an explanation from you why that you have been
6 operating the way you are.

7 And based on the information that was
8 presented it appeared that you have a plausible
9 explanation why you have been operating the way
10 you have been, and now we're now putting you on
11 notice to say yes, your explanation is fine,
12 however it's not the way our interpretation of
13 the law.

14 So the recommendation I'm making to my
15 board members is that we give you warning to say
16 that, okay, we have warned you to say this is
17 what you have to do, so if Mr. Brashears or some
18 other investigator comes out and you continue to
19 do that, then the Board is not going to be
20 sympathetic. We are going to -- we have a
21 penalty schedule and we are going to say you were
22 put on notice to say this is what the law is and

1 you're not complying with it. So therefore, no
2 matter what reason you give us I will let you
3 know that as a board member, if you come back in
4 front of me with that same issue and it looks
5 like you're looking at the corners and not inside
6 the law, then I'm not going to be sympathetic.
7 I'll just say that to you.

8 But I might have an open mind, but I'm
9 just saying I will sit here and say, well you
10 know, you told me that before and so why you
11 continue doing it? So the recommendation I'm
12 making to my board members is that we issue a
13 warning. Is there a second?

14 MR. SHORT: Second.

15 [Vote taken.]

16 CHAIRPERSON ANDERSON: Okay. Five, zero,
17 zero. So the Agency will issue a warning.

18 Yes, Mr. Silverstein?

19 MR. SILVERSTEIN: I would like to
20 associate myself with all of your comments and
21 would like to add that I'd like to thank
22 Investigator Brashears for an excellent report

1 here. This was a rather confusing issue with
2 various sales in various places, and he was able
3 to pick out what was going on and make it
4 understandable to us and we can move forward
5 because of that and I'd like to thank him for his
6 work.

7 MR. BRASHEARS: All right. Thank you,
8 sir.

9 CHAIRPERSON ANDERSON: So I would say to
10 you then, if Investigator Brashears or some other
11 investigator comes to your establishment on
12 Tuesday and see that you're doing that, they're
13 empowered to give you a citation and that you'll
14 go through the process because you're now on
15 notice publically what your responsibilities are.
16 Okay?

17 MR. YAMAZAKI: Sure. Yes.

18 CHAIRPERSON ANDERSON: And thank you.
19 And thank you for your testimony and thank you
20 for your honest testimony. You were not here, at
21 least in my view, making excuses about why you --
22 it was very forthright and very honest and I

1 appreciate that. And so I just, I don't want you
2 to think that it was not -- your testimony was
3 not appreciated. So I just want you to know
4 that, that it was appreciated.

5 But at the same time I want you to know
6 what the law is and what it is that we expect
7 from you. Okay? All right. Thank you, then.
8 All right, then. All right. You're free to go.

9 MR. YAMAZAKI: Thank you.

10 CHAIRPERSON ANDERSON: I'm not sure, I
11 think you'll receive something in writing that
12 tells you that puts you on notice.

13 MR. YAMAZAKI: Sure.

14 CHAIRPERSON ANDERSON: What occurred
15 today. Okay. All right. Thank you, sir.

16 MR. YAMAZAKI: Thank you.

17 CHAIRPERSON ANDERSON: All right.

18 [Whereupon, the above-entitled matter
19 concluded.]

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